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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,238	02/06/2004	Holger Tank	63,227A	8680
25212	7590	11/06/2006	EXAMINER	
DOW AGROSCIENCES LLC 9330 ZIONSVILLE RD INDIANAPOLIS, IN 46268			CLAYTOR, DEIRDRE RENEE	
			ART UNIT	PAPER NUMBER

1617

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,238

Applicant(s)

TANK ET AL.

Examiner

Renee Claytor

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgement of Response

Applicant's amendments and arguments filed on 10/2/2006 have been fully considered but are not found persuasive. Applicant's arguments over the 102(b) rejection in the Office Action mailed on 7/11/2006 are not found persuasive.

Response to Arguments

Applicant's argue that the agricultural chemical composition of Okana et al. comprises a glyphosate, including monomethylamine or dimethylamine salts, a quarternary surfactant, and an acid salt, with the acid salt being necessary to impart stability to the composition. The transitional phrase "consisting essentially of" allows for the inclusion of steps that do no materially affect the basic and novel characteric(s) of the claimed invention. Applicant's also argue that the statement of "...the monomethylamine (MMA) and the dimethylamine (DMA) salts of glyphosate allow the preparation of high-strength liquid formulations at surprisingly low viscosity" in the Specification is not an admission that low viscosity is an inherent property of the MMA/DMA salt compositions of Okana et al. This detail will be discussed more in the following rejection.

Objections

Claim 5 is objected to as being dependent upon a rejected base claim.

Claim Rejections – 35 U.S.C. § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case, the Amendment broadens the scope of claim 1 (a) by broadly making the surfactant an amine surfactant instead of an alkylamine or alkyletheramine. The Specification claims that the surfactant is an alkoxylated alkylamine or etheramine.

Claim Rejections – 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okano et al. (U.S. Patent 6,030,923) in view of Beestman et al. (U.S. Patent 4,159,901).

Okana et al. teach herbicidal compositions containing water, glyphosates, including monomethylamine or dimethylamine, and a cationic quarternary ammonium surfactant (see Table 1, Invention product 3 and 4). It is recognized that the claim language reads "consisting essentially of", meaning that additional ingredients may be added to the composition without materially affecting the properties of the claimed composition. It is further taught that the composition is diluted with water and applied to loci such as farms, fields, fruit gardens etc. to control fungi, bacteria, insects and mites (meeting the limitation of claim 7; Col.10, lines 32-42).

Okana et al. do not teach herbicidal compositions containing glyphosates in the amount of 350 grams of acid equivalent per liter of the composition or surfactant amounts of about 20 to about 200 grams per liter of the composition.

Beestman et al. teach of agricultural compositions containing glyphosates and surfactants that fall within the ratios of the claimed invention (meeting the limitation of claims 1 and 2; Col. 4, lines 55-63 and Table 1).

The herbicide composition having a viscosity of less than 140 centipoise is obviously taught in the herbicidal composition of Okana et al. Because the composition of the prior art and the composition of the present claims are comprised of the same components, it is obvious that they share the same physical properties. Patent law states that "products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses

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and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention to prepare the herbicidal composition containing water, glyphosates (including monomethylamine or dimethylamine) and a cationic quarternary ammonium surfactant) according to the teachings of Okana et al. and to prepare it in a concentrated solution in the optimized ratios taught by Beestman et al. The motivation to combine the two references into a concentrated solution is to maximize the treatment of plants.

Conclusion

Claim 5 is free of the art.

Contact Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renee Claytor whose telephone number is 571-272-8394. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Renee Claytor



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER